Protocol for the Development, Review and Use of Codes of Practice in Alberta Environment

Overview

In 1996, Alberta Environment (AENV) introduced Codes of Practice as part of its efforts to streamline Alberta's environmental regulatory processes. Codes of Practice are part of a simpler, more efficient regulatory system. A Code of Practice provides a standardized set of rules for carrying out a specific activity or operation that is regulated under specific legislation.

AENV's authorizations for activities/ operations are issued after AENV does a thorough review of the individual operation/ activity. These authorizations include conditions specifying how the activity/ operation is to be conducted. AENV's Codes of Practice requirements replace all or part of an authorization process.

AENV has two types of Codes of Practice. The first type fully replaces an authorization process, requires prior registration or notification of the activity/ operation, and includes operational requirements to be met. The second type of Code of Practice replaces the operational requirements portion of the authorization. An example of the second type is the Code of Practice for Pesticides, which applies to all pesticide operations/ activities regardless of whether a registration or approval is required.

This protocol describes AENV's process for the development, review and use of Codes of Practice.

A. What are Codes of Practice and how does AENV use them?

- A Code of Practice **is** an enforceable legislative instrument linked to an applicable Act by a regulation or through a requirement of an authorization.
- A Code of Practice **is not** an information/supporting document, guide, best practices manual or handbook.
- A Code of Practice is a standardized industry-wide authorization or a portion of an authorization for carrying out a regulated activity or operation. It is distinct from an individualized authorization because individualized authorizations are a) applied for on a case-by-case basis, and b) include site-specific conditions determined by AENV on an individual application basis.
- AENV uses Codes of Practice to replace all or parts of an individualized authorization or the operational conditions portion of an individual authorization required for specific regulated activities/ operations. Some of these activities/operations are ongoing (asphalt plants) and others occur only once (hydrostatic tests of pipelines).
- Codes of Practice are part of AENV's commitment to a streamlined, simplified, efficient and up-to-date regulatory system.

B. What are the Features of a Code of Practice?

- A Code of Practice ensures the same level of protection and high environmental standards as an individual authorization by:
  1. carrying the same legal authority as an individual authorization. This is done by directly referencing the Code of Practice in legislation (an Act or its Regulations) or by the conditions of an authorization that is referenced in legislation,
  2. incorporating the same level of requirements that are applied to an activity/operation under an individual authorization, and
  3. being enforceable. The enforcement response for failing to comply with a Code of Practice is consistent with what would occur for failing to comply with an individual authorization;
- A Code of Practice does not require AENV to make individual authorization decisions for how an activity/ operation will be conducted; and
- Authority to do an activity under a Code of Practice is not appealable, except where the activity is part of an approval. When the activity is part of an approval, the decision to issue the approval may be appealable, but how the activity is conducted as described by the Code of Practice will not be appealable.

C. When can a Code of Practice be developed?

- The Act or Regulation must allow for a Code of Practice to be created to replace all or a portion of an individual authorization requirement. (The Act or Regulation will not reference the Code of Practice when the Code of Practice is designed to be followed as a requirement of an authorization.);
- The Act or Regulation must include provisions that allow for a level of enforcement for non-compliance with the Code of Practice that is consistent with that available under an individual authorization's provisions; and
- The activity to be regulated under a Code of Practice must:
  1. have relatively minor emissions (that will not cause a significant adverse effect),
  2. have a minimal potential for resource/ environmental impact,
  3. achieve good levels of environmental protection through the use of well-established, standardized and/or routine practices, processes and procedures,
  4. not generally be of public interest or concern, and
  5. be an activity or operation that occurs frequently enough to warrant developing a Code of Practice.

D. Departmental Format for a Code of Practice

A Code of Practice can be a stand-alone "authorization" document, or it can be referenced in an authorization document (i.e. an approval as is the case for the Code of Practice for Pesticides). It includes a table of contents, and is broken into a main body and schedules. The main body includes requirements that apply to either:

1. all who are operating pursuant to a registration or a notification (that is, all persons regulated under the Code of Practice), or

2. where an authorization is required, all those required to meet the Code of Practice requirements for an activity/ operation under an authorization.

When the main body of a Code of Practice includes a choice to follow one of two or more sets of requirements, each set of requirements is included in a separate schedule of the Code of Practice.

In all cases, the Code of Practice describes how the activity/ operation must be conducted. Goals, direct requirements or a combination of goals and direct requirements may be used for this description. All parts of a Code of Practice are enforceable.

The following is a description of the components of a Code of Practice. ***(Included are notes outlining when the components are not required or when components are different because the Code of Practice is referenced as part of an approval.)***

I. **Table of Contents**

II. **Main Body**

1. **Definitions**: should be consistent with departmental/ legislativedefinitions
2. **Bound by Code of Practice:** specifies that a person responsible must meet the requirements set out in the Code of Practice. ***(Note: this section is not required for a Code of Practice that is referenced by an approval)***
3. **Bound by Legislation:** specifies that a person responsible must meet the requirements set out in the Legislation. ***(Note: this section is not required for a Code of Practice that is referenced by an approval)***
4. **AENV Administrative Process Requirements**: includes requirements to file a notification/ application for registration number, etc. ***(Note: a variation of this section may be required for a Code of Practice that is referenced by an approval)***
5. **Documentation Requirements**: outlines documents that must be prepared and may need to be submitted (for example drawings, written instructions, etc. for the operation/activity). In some cases, a professional will develop the plans to provide direction to a proponent on how to meet the operating requirements and standards for the operation/activity. In these cases, sign-off by the professional that the standards are met by the activity needs to be included. The plan may be standardized operating practices for the facility, or an industry wide standard that is defensible.
6. **Qualifications of persons undertaking work related to the activity:** outlines qualifications required (for example, the operator requires a pesticide applicator's licence).
7. **Operating Requirements and Standards**; This will outline overall and specific minimum standards and requirements for resource protection (for example, activity design, siting, set-up, preparation, construction, monitoring, universal standard analytical methods, environmental

protection/resource management requirements, pollution control technology requirements, handling of soil, water, waste; monitoring, etc.). The requirements and standards may be broken into requirements that are to be met:

(a) **prior to** the activity (for example: insurance coverage which must be in place and documented),
(b) **during** the activity, and
(c) **after** the activity (for example: post activity /operation certification requirements, as-built plan requirements).

8. **Other General Requirements and Standards**
9. **Notification Requirements other than to AENV** (for example, notification of persons affected by the activity/ operation, such as the occupants and owners of structures adjacent to a fumigation)
10. **Contravention Reporting Requirements**: provides requirements for advising AENV of a contravention of the Code of Practice.
11. **Progress and Final Status Reporting Requirements**: provides requirements for reporting on the progress and completion of the activity/ operation.
12. **Information Availability and Record Keeping Requirements:** outlines records that must be kept and how long they must be kept.
13. **De-registration**: describes a de-registration process that is followed when an operation ends (this may be necessary for example, for the *Environmental Protection and Enhancement Act* Codes of Practice. ***(Note: this section is not required for a Code of Practice that is referenced by an approval)***
14. **Effective Date**: provides the date that the Code of Practice comes into effect. ***(Note: this section is not required for a Code of Practice that is referenced by an approval)***
15. **Code Amendment**: specifies that AENV may institute a review and amendment of the Code of Practice at any time, however the Code of Practice will be reviewed by a specified date. ***(Note: this section is not required for a Code of Practice that is referenced by an approval)***

III. **Schedules** – When two or more sets of requirements exist that are choices for a person following the Code of Practice, the requirements should be divided into separate Schedules unless a higher level of clarity is obtained by including the different requirements/options in the main body. For example, under the *Environmental Protection And Enhancement Act Code of Practice for the Release of Hydrostatic Test Water from the Hydrostatic Testing of Petroleum Liquid and Gas Pipelines,* test water can be released to water or land, therefore the requirements for a release to water and a release to land are in separate schedules.

The Schedules may also include the maps, titles and addresses of directors or relevant department officials necessary to determine where to send a notice/ registration or where to report an infraction of the Code of Practice.

E. Guide to the Code of Practice:

A Code of Practice may be supported by a "Guide to the Code of Practice" which provides helpful information for using the Code of Practice. The guide will be a **separate document** and will be described as not being part of the Code of Practice. Since the guide is not part of the Code of Practice, it is **not enforceable** under the powers of the Act or regulations that the Code of Practice is based on.

The guide may include:

1. background information to provide context, including an explanation of authorizations that were required before the Code of Practice was developed, other authorizations that may be required, and the overall process to meet the Code of Practice.
2. general information and suggestions about sources of information and techniques for following the Code of Practice, including regulated body (industry) manuals, best practices, guidelines, and reference materials that are available.
3. information about the process used to review the Code of Practice, including the Code of Practice amendment process, and how to notify AENV of concerns.
4. advice on where to obtain more information.
5. suggested forms that can be used including notification, registration and other related forms.

F. Suggested Process for the Development, Review and Authorization of a Code of Practice

step 1. The Division wanting the Code of Practice develops a draft according to the departmental (standard) format in this protocol. The Code of Practice will generally be developed with input from the stakeholders that are regulated by it and any other departmental Divisions or government departments that may be involved in related/ affected activities. The Division will:

- ensure technical accuracy, and
- where possible, develop criteria and measures for compliance monitoring to determine compliance and facilitate enforceability.

NOTE: It is important to scope out clearly defined criteria, measures and processes for compliance monitoring as early as possible in the development of a Code of Practice, especially where it may directly affect a range of resources or environmental values.

step 2. The Division reviews the draft Code of Practice with the:

- Environment Law Section of Alberta Justice (who will also co-ordinate a review with Justice's Special Prosecutions Branch for enforceability issues) ***(note: the Environment Law Section will not review Guides to Codes of Practice)***;
- other Divisions within its Service, the other Services and other affected government departments. This review provides information and

addresses consistency and overlap issues to meet AENV's commitment to an integrated approach to the management of resources; and

- Compliance Division for advice on whether the Code of Practice meets AENV's Departmental protocol for Codes of Practice.

step 3. A director is appointed as being responsible for the Code of Practice. This director signs off on the Code of Practice to finalize it. The director's responsibilities include bringing the Code of Practice into effect and updating and modifying the Code of Practice as needed.

step 4. The Queen's Printer publishes the Code of Practice. This step is co-ordinated by Communications Division. ***(Note: a time period may be appropriate for the Code of Practice to come into effect (for example 60 days) after the date the Code of Practice is published).***

step 5. The Regulated Community is made aware of the Code of Practice. How this is done depends on whether the Code of Practice is referenced by regulation or through an authorization. Environmental Law Section can advise how notice of the Code of Practice should be provided.

step 6. The Director responsible makes copies of the Code of Practice publicly available through:

- the AENV library and Information Centre,
- AENV regional and district offices, and
- the Queen's Printer.

step 7. The division responsible for the Code of Practice retains the original document (in its electronic format).

step 8. AENV's Policy Compendium is updated to include the new Code of Practice.

step 9. The Code of Practice is implemented.

step 10. Compliance assurance (education, prevention and enforcement) is carried out to ensure the Code of Practice is followed.

step 11. The director responsible for the Code of Practice maintains a list of issues identified regarding the Code of Practice.

step 12. The director responsible for the Code of Practice implements a review of the Code of Practice when it is appropriate. At a minimum, the Code of Practice will be reviewed at its designated review and amendment date.

G. Advantages of a Code of Practice

For a regulated community, the advantages of a using a Code of Practice are:

- The rules are clearly laid out for the activity/ operation.

- The playing field is levelled because all regulated parties must meet the Code of Practice.
- The playing field is levelled because AENV has more time to focus on poor performers rather than processing good performer applications for authorizations. This encourages poor performers to do a better job.
- The Code of Practice supports the development of industry wide best practices by setting legislative based goals and standards.
- The AENV registration/ authorization processing time for the activity/ operation should be quicker than the current AENV authorization processing time because the review of technical aspects of the application is no longer required and conditions are standardized. For Codes of Practice that require a notification, there will no longer be any effect on the regulated community from AENV processing time.

The advantages of a using a Code of Practice for AENV are:

- It encourages consolidating information and setting standards of performance/ requirements for activities/ operations.
- Time spent processing authorizations and doing technical reviews for routine activities is reduced.
- AENV can focus its efforts on compliance assurance activities, and on applications for approving complex individual activities/ operations.
- Stakeholders are involved in developing/defining best practices for their industry.
- Code of Practice development, application and review process can be used to focus efforts on expanding knowledge about science and technology issues related to the activity /operation that is subject to the Code of Practice.

H. Suggestions about how to enhance the use of Codes of Practice

Where possible, one-window processes should be developed for an activity/ operation. An example of this is the one-window process developed for Hydrostatic Testing in which:

- the *Water Act* notification and the application for an *Environmental Protection and Enhancement Act* Code of Practice registration number are submitted to AENV on one application for registration/notice, and
- one guide for the *Environmental Protection and Enhancement Act* and *Water Act* Hydrostatic Testing Code of Practice is being developed.

I. AENV's current and planned Codes of Practice (See attached table)

PUBLISHED CODES OF PRACTICE

Name of *Environmental Protection And Enhancement Act* (EPEA) Code of Practice (Code of Practice for "...")	**Year when the Code of Practice is to be reviewed**	**Review increment; every "...." years**
Landfills	2001	5
Oil Production Sites	1999	2
Compost Facilities	2001	5
Pesticides	January 1, 2002	5
Exploration Operations	2001	5
Small Vegetable Processing Plants	2006	10
Small Fish Farms And Fish Processing Plants	2006	10
Tanker Truck Washing Facilities	2006	10
The Release of Hydrostatic Test Water from Hydrostatic Testing of Petroleum Liquid and Gas Pipelines	January 1, 2009 (not dated in Code of Practice)	10
Asphalt Paving Plants	2006	10
Small Meat Processing Plants	2006	10
Foundries	2006	10
Concrete Producing Plants	2006	10
Compressor And Pumping Stations And Sweet Gas Processing Plants	2006	10
Hydrologic Tracing Analysis Studies	2006	10
Name of *Water Act* Code of Practice (Code of Practice for "...")	**Year when the Code of Practice is to be reviewed**	**Review increment; every "...." years**
the Temporary Diversion of Water for Hydrostatic Testing of Pipelines	January 1, 2004	Anytime, but at a minimum Jan 1, 2004

CODES OF PRACTICE UNDER DEVELOPMENT

Name of Code of Practice under Development	**Legislation**
Code of Practice for Small Incinerators	EPEA
Code of Practice for Land Treatment And Disposal Of Soil Containing Hydrocarbon	EPEA
Code of Practice for the Production of Alternative Fuel and the Burning Of Fuel Derived from Waste	EPEA
Code of Practice for Sand And Gravel Pits	EPEA
Code of Practice for Pipelines and Telecommunication Lines Crossing a Water Body	*Water Act*
Code of Practice for Watercourse Crossings	*Water Act*